



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,601	11/21/2001	John E. Krech	57135US002	3879
32692	7590	09/16/2004		
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427				
			EXAMINER AUGHENBAUGH, WALTER	
			ART UNIT 1772	PAPER NUMBER

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/990,601

Applicant(s)

KRECH ET AL.

Examiner

Walter B Aughenbaugh

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED August 26, 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See continuation sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 30,32-37,46-53 and 55-61.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

ADVISORY ACTION

Acknowledgement of Applicant's Amendments

1. The After Final Amendment filed August 26, 2004 has not been entered since it presents one additional claim (new claim 62) without canceling one finally rejected claim.

Answer to Applicant's Arguments

2. In the first paragraph of page 7 of the After Final Amdt., Applicant incorrectly states that the new rejections that were made of record in the Final Rejection mailed June 30, 2004 "were not necessitated by amendment of the application by Applicant". Independent claim 30 of the amendment filed April 16, 2004 requires that "all of the flame retardant(s)" are non-halogenated, as opposed to previous versions of the independent claim that required that only one flame retardant of a group of flame retardants (in situations where there is a group of flame retardants) be non-halogenated. Paragraph 5 of the Final Rejection mailed June 30, 2004 states "The 35 U.S.C. 102 rejection of claims 30-32 that was repeated in paragraph 6 of Paper 16 has been withdrawn due to Applicant's amendments in claim 30 in Amdt. D": the rejection of claims 30-32 as anticipated by Nagano et al. was withdrawn because Nagano et al. requires a halogenated flame retardant. Paragraph 6 of the Final Rejection mailed June 30, 2004 states "The 35 U.S.C. 102 rejections of claims 30, 32, 34-37, 47, 49-53 and 55-61 made of record in paragraphs 13 and 14 of Paper 16 have been withdrawn due to Applicant's amendments in claim 30 in Amdt. D": the rejection of these claims as anticipated by Oishi et al. was withdrawn because Oishi et al. fail to explicitly teach that the plastic article of Oishi et al. is a pallet, as stated in paragraph 11 of the Final Rejection mailed June 30, 2004. The new rejections were made because of the new requirements of claim 30 that "all of the flame retardant(s)" are non-halogenated and that the

Art Unit: 1772

container as previously claimed by Applicant be a pallet, so the new grounds of rejection presented in the Final Rejection mailed June 30, 2004 were indeed necessitated by Applicant's amendments in the amendment filed April 16, 2004. Form paragraph 7.39 was inadvertently left out of the Office Action, but as explained above, the Office Action clearly points to the fact that the new grounds of rejection presented in the Office Action were necessitated by Applicant's amendments.

3. Applicant's arguments on pages 7-12 of the After Final Amdt. regarding the 35 U.S.C. 103 rejection of claims 30, 32, 34-37, 47, 49-53, 55 and 57-61 have been fully considered but are not persuasive. Applicant takes issue with the argument on "page 10, lines 10-14" of the Office Action that uses the phrase "sufficient overlap": the diguanamines of the Second Invention of Oishi et al. are the diguanamines of the Third Invention of Oishi et al., and in the discussion of the Second Invention of Oishi et al., Oishi et al. explicitly teach that the diguanamines are flame-retardant, so the diguanamines of the Third Invention (which are the same as the diguanamines of the Second Invention) are necessarily flame retardant. The phrase "sufficient overlap" refers to this fact.

A blend of one or more polyolefin resin/s and a one or more thermosetting resin/s is explicitly taught at col. 29, lines 1-6 of Oishi et al. Rubbers are thermosetting resins.

Applicant states on page 9 of the After Final Amdt. that col. 29, lines 6-56 "lists many thermoplastic resins, and concludes on lines 55-56 with 'blends, block copolymers, graft copolymers, and rubber-modified polymers of these resins'": rubbers are thermosetting resins, so this portion of Oishi et al. that Applicant cites is an explicit teaching of a blend of thermoplastic resin/s and thermosetting resins, and this portion is a repetition of what is stated at col. 29, lines

Art Unit: 1772

1-6. The teaching at col. 29, lines 55-56 clarifies what is meant by that which is stated at col. 29, lines 1-6.

In regard to Applicant's discussion on page 10 of the After Final Amdt. regarding claim 59, as indicated in the rejection of this claim, the scope delineated by Applicant's originally filed definition of "semi-interpenetrating polymer network" includes polymer blends. Applicant's discussion on page 10 of the After Final Amdt. supports this position: Applicant describes a semi-interpenetrating polymer network as "having one polymer interwoven with the other", and this cited phrase would be accurately used to describe many polymer blends.

In regard to Applicant's argument regarding claims 32, 52 and 53, Oishi et al. teaches blending thermoplastic resins with thermosetting resins at col. 29, lines 1-6, and epoxy resin is provided as an example thermosetting resin at col. 29, lines 61-62. In regard to Applicant's argument regarding claims 34, 47 and 51, Oishi et al. teaches the combination of glass beads with the flame retarding diguanamines (the diguanamines of the Second Invention are the same as the diguanamines of the Third Invention) at col. 32, line 51-col. 33, line 2, so Oishi et al. teaches that the glass beads are used in combination with the diguanamines regardless of form of the article that is formed from the polymeric composition of Oishi et al. Oishi et al. teach the composition claimed in claims 49 and 50 (except for the relative amounts) (col. 29, lines 1-6).

4. Applicant's arguments on pages 12-13 of the After Final Amdt. regarding the 35 U.S.C. 103 rejection of claim 33 have been fully considered but are not persuasive. Applicant argues that "Applicant is using the word "structural" in accordance with the dictionary definition that has been made of record that defines the word as a weight-bearing part", but the application as originally filed does not limit the term "structural" to the definition to which Applicant refers.

Art Unit: 1772

5. Applicant's arguments on pages 13-14 of the After Final Amdt. regarding the 35 U.S.C. 103 rejection of claim 46 have been fully considered but are not persuasive. Applicant's arguments depend entirely upon Applicant's arguments regarding the 35 U.S.C. 103 rejection of claims 30, 32, 34-37, 47, 49-53, 55 and 57-61 that have been addressed above.

6. Applicant's arguments on pages 14-15 of the After Final Amdt. regarding the 35 U.S.C. 103 rejection of claim 48 have been fully considered but are not persuasive. Applicant's arguments depend entirely upon Applicant's arguments regarding the 35 U.S.C. 103 rejection of claims 30, 32, 34-37, 47, 49-53, 55 and 57-61 that have been addressed above.

7. Applicant's arguments on pages 15-16 of the After Final Amdt. regarding the 35 U.S.C. 103 rejection of claim 56 have been fully considered but are not persuasive. Applicant's argues "Contrary to the rejection statement (page 10, lines 3-5) Oishi et al. does not teach a pallet", but the rejection states "the pallet of Oishi et al. and Endo et al.", i.e. the pallet taught by Oishi et al. and Endo et al.". The 103 rejection of claim 30 acknowledges that Oishi et al. fail to explicitly teach a pallet, but that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the part or component of transportation equipment or container of Oishi et al. in the form of a pallet since it is notoriously well known to form flame retardant containing plastic pallets as taught by Endo et al. Applicant's argument that "It is not expected that a coating will add structural support to an article" is irrelevant to the rejection of claim 56.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-

Art Unit: 1772



1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 6:00pm and on alternate Fridays from 9:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh
09/08/04

WBA


HAROLD PYON
SUPERVISORY PATENT EXAMINER


9/9/04